

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

U.S. BORAX INC.,	:	
	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 19-cv-01661-MAK
v.	:	
	:	
MARK ZAMEK,	:	
	:	
	:	
Defendant.	:	

**PLAINTIFF U.S. BORAX INC.’S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 15(a)(2), Plaintiff U.S. Borax Inc. (“Plaintiff”) submits this Motion for Leave to File a Second Amended Complaint. In support of its motion, Plaintiff states:

1. Plaintiff filed this lawsuit on April 17, 2019.
2. On May 23, 2019, Defendant filed a Motion for Partial Dismissal of Plaintiff’s claims.
3. In response to that motion, on June 7, 2019, Defendant filed a First Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1).
4. The First Amended Complaint added additional facts, including facts from Defendant’s deposition, to address the alleged pleading deficiencies outlined in Defendant’s Motion.
5. Further, the First Amended Complaint added claims for breach of the fiduciary duty of loyalty and interference with existing contractual relationship.
6. On June 8, 2019, Defendant’s new employer, Etimine USA Inc. (“Etimine”), produced evidence that Defendant had uploaded Plaintiff’s confidential documents to a computer he used at Etimine.

7. In light of this new evidence, Plaintiff seeks to amend its First Amended Complaint to include allegations about the information that Defendant uploaded to his Etimine computer. Defendant also seeks to add a claim based on Defendant's breach of his severance agreement, including a request for attorney's fees and the return of the payment Plaintiff made to Defendant pursuant to that agreement.
8. A copy of Plaintiff's Second Amended Complaint is attached hereto as Exhibit A.¹
9. Defendant has consented to Plaintiff's request to file a Second Amended Complaint.
10. Pursuant to Fed. R. Civ. P. 15(a)(2) the Court "should freely give leave [to amend a pleading] when justice so requires."

Plaintiff respectfully requests leave to file its Second Amended Complaint.

Date: June 21, 2019

s/ Rachel C. Stone
Janice G. Dubler (PA ID 76578)
Daniel P. O'Meara (PA ID 53535)
Rachel C. Stone (PA ID 318656)
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
1735 Market Street, Suite 3000
Philadelphia, PA 19103
(215) 995-2800
janice.dubler@ogletree.com
rachel.stone@ogletree.com

Attorneys for Plaintiff

¹ A blacklined copy showing the changes between Plaintiff's First Amended Complaint and Plaintiff's Second Amended Complaint is attached here to as Exhibit B.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document upon the following by the Court's ECF System, this 21st day of June 2019:

Casey Green
Rachel Dennis
Sidkoff, Pincus & Green, P.C.
2700 Jefferson Tower
1101 Market Street
Philadelphia, PA 19103
cg@sidkoffpincusgreen.com
rdennis@sidkoffpincusgreen.com

/s/ Rachel C. Stone
Rachel C. Stone